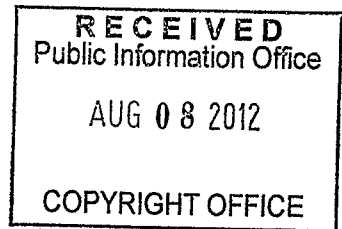


Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.



\_\_\_\_\_  
In the Matter of )  
)  
)

Distribution of the 2004, 2005, 2006,  
2007, 2008 and 2009 )  
Cable Royalty Funds )  
\_\_\_\_\_ )

Docket No.

2012-1-CRB CD 2004-09

**MOVANTS' REPLY TO INDEPENDENT PRODUCERS GROUP'S OPPOSITION TO  
MOTION TO INITIATE PHASE II PROCEEDINGS FOR THE DISTRIBUTION OF  
THE 2004, 2005, 2006, 2007, 2008 AND 2009 CABLE ROYALTY FUNDS**

The Program Suppliers, Joint Sports Claimants, and the Devotional Claimants (collectively "Movants") hereby submit this reply to the Independent Producers Group's ("IPG's") Opposition to the Motion to Initiate Phase II Proceedings for the Distribution of 2004-2009 Cable Royalty Funds.

IPG's argument is predicated on the erroneous assumption that IPG can press forward on its claims to the 1998 and 1999 cable funds, and the 1997, 1998, and 1999 satellite funds, notwithstanding its recent unsuccessful effort to invalidate the settlement agreement between IPG, the Motion Picture Association of America ("MPAA"), and the Library of Congress. But the settlement agreement precludes IPG from participating in any distribution proceeding relating to the 1998 and 1999 cable funds, and the 1997, 1998, and 1999 satellite funds. Specifically, the agreement requires IPG to "withdraw its notice(s) of intent to participate in the proceeding to distribute the 1997, 1998, and 1999 Cable Royalty Funds and the 1997, 1998 and 1999 Satellite Royalty Funds." MPAA's Motion to Stay Proceedings, Exhibit 1, Docket No. 2008-1 CRB CD 98-99 (Phase II) (June 24, 2008) (an excerpt of the MPAA's Motion and Exhibit 1 is attached as Appendix A). Accordingly, the 1998-99 cable and 1997-99 satellite

proceedings have no bearing on whether the Judges should commence Phase II proceedings for 2004-09.<sup>1</sup>

IPG's reliance on the unresolved 2000-03 satellite proceeding is similarly misplaced. Although IPG argues that the Judges should resolve disputes relating to 2000-03 satellite before commencing proceedings for 2004-09 cable, IPG fails to provide a cogent reason why the Judges cannot initiate both proceedings. Movants do not oppose convening proceedings related to the 2000-03 satellite funds; indeed, Movants believe the Judges should convene a proceeding to resolve remaining disputes related to the 2000-2009 satellite royalty funds. Accordingly, Movants plan to file a motion to initiate proceedings related to those funds within a few days of filing this reply.

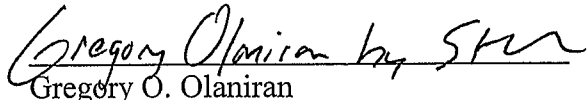
The Copyright Royalty Judges ("Judges") reserved \$20,000,000 dollars in royalties to resolve Phase II disputes related to the 2004-09 cable royalty funds. Eight years have passed since some of those royalties were deposited with the Copyright Office, and the parties should not be prejudiced in proving the value of their respective claims to those funds by further delay of these proceedings. Accordingly, Movants request that the Judges reject IPG's position and proceed with the initiation of distribution proceedings to resolve Phase II disputes related to the 2004-2009 cable royalty funds.

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<sup>1</sup> Movants plan to file a motion for final distribution of the 1998-99 cable royalty funds and the 1997-99 satellite royalty funds within a few days of the instant filing. Movants also note that even if additional proceedings were necessary for these funds, that would not present a reason for delaying initiation of Phase II disputes for 2004-09 cable.

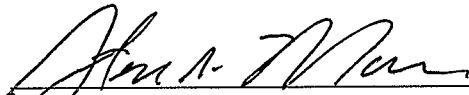
Respectfully submitted,

**PROGRAM SUPPLIERS**



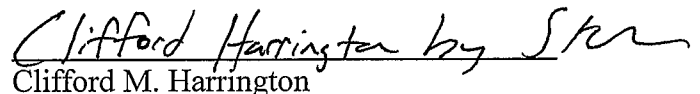
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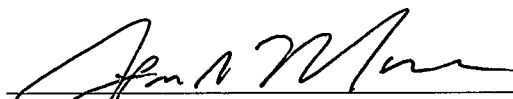


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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of August, 2012, a copy of the foregoing Reply to Independent Producers Group's Opposition to Motion to Initiate a Phase II Proceeding, was sent by Federal Express overnight mail, to the parties listed on the attached service list.



---

Stephen K. Marsh

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# Appendix A

**RECEIVED**

JUN 24 2008

Before the  
**COPYRIGHT ROYALTY BOARD**  
Washington, D.C.

*Copyright Royalty Board*

\_\_\_\_\_  
In the Matter of )

Distribution of the )  
1998 and 1999 Cable Royalty Funds )

Docket No. 2008-1 CRB CD 98-99  
(Phase II)

## MOTION TO STAY PROCEEDING

The Motion Picture Association of America, Inc. ("MPAA"), on behalf of its member companies and other producers and distributors of syndicated series, movies, and specials broadcast by television stations whose signals are retransmitted by cable systems, and who have agreed to representation by MPAA ("MPAA-represented Program Suppliers"), hereby moves the Copyright Royalty Judges ("Judges") to stay the Phase II proceeding regarding the distribution of the 1998 and 1999 royalty funds ("1998-99 Phase II Proceeding") in the Program Suppliers category. The stay is warranted because of two legal actions, instituted by Independent Producers Group ("IPG"), whose outcome could affect whether IPG has a right to participate in the instant proceeding. The Judges have authority to issue this stay pursuant to 17 U.S.C. § 801(c).

In one of the legal actions, IPG is challenging the validity of a three party settlement agreement involving IPG, MPAA and the Librarian of Congress ("Agreement") pursuant to which IPG agreed not to participate in the distribution of 1998 and 1999 cable and satellite royalties ("Contract Action"). A copy of the Agreement is attached hereto as Exhibit 1,<sup>1</sup> and a copy of IPG's Complaint seeking to void and partially rescind the Agreement is attached hereto

<sup>1</sup> Exhibit 1 has been redacted to preserve the confidentiality of the amount that MPAA paid to IPG pursuant to the Agreement. See Exhibit 1 at Part 1, p. 2.

as Exhibit 2. The Contract Action is currently pending in the United States District Court for the Central District of California. If the District Court determines, as it should, that the Agreement is valid, IPG would have no right to participate in the instant proceeding.

In the other legal action – a malpractice action by IPG against its former counsel - IPG stands to receive damages specifically for allegedly lost 1998 and 1999 cable royalties as a result of its counsel's role in negotiating the Agreement ("Malpractice Action"). IPG's Complaint and Demand for Damages in that action are attached hereto as Exhibits 3 and 4. The Malpractice Action is currently pending in the Superior Court for Los Angeles, California. If IPG receives compensation for lost 1998 and 1999 cable royalties in the Malpractice Action, that recovery would obviate the need for IPG to seek compensation for those same royalties in this proceeding. Alternatively, a determination that IPG's former counsel committed no malpractice could indirectly validate the Agreement, thus barring IPG from participating in this proceeding. For these reasons, MPAA respectfully requests a stay of the 1998-99 Phase II Proceeding in the Program Suppliers category until the resolution of these pending legal disputes.

## **I. BACKGROUND**

The following background summarizes the events leading up to the execution of the Agreement and is useful in understanding the nexus between the pending legal actions and the instant proceeding.

### **A. The 1997 Phase II Cable Distribution Proceeding**

On November 1, 2000, the Copyright Office ("Office") initiated a Copyright Royalty Arbitration Panel ("CARP") proceeding to resolve a Phase II dispute between IPG and MPAA regarding the distribution of cable royalties collected for the 1997 royalty year within the Program Suppliers category ("1997 Cable Phase II Proceeding"). See 65 Fed. Reg. 65335



(November 1, 2000). The CARP's initial findings, issued on April 16, 2001, were rejected by the Librarian on June 5, 2001. The CARP issued revised findings on June 20, 2001, which the Librarian again rejected. The Librarian then remanded the proceeding for consideration by a new CARP in a final order dated December 26, 2001 ("Agency Determination"). See 66 Fed. Reg. 66433, 66434 (December 26, 2001).<sup>2</sup> Both IPG and MPAA appealed the Agency Determination to the United States Court of Appeals for the District of Columbia Circuit (Case Nos. 02-1033 and 02-1040), naming the Librarian as the Respondent in both cases ("Appellate Cases").

#### **B. Raul Galaz's Incarceration**

While the Appellate Cases were pending, IPG's majority shareholder and President at that time, Raul Galaz, was convicted on December 23, 2002 and subsequently incarcerated for fraudulently obtaining copyright royalties as a Program Suppliers claimant. See Plea Agreement and Information in *United States v. Raul Galaz*, Criminal Docket No. 02-cr-00230 (dated May 29, 2002) (pleading guilty to mail fraud perpetrated while "engaging in a scheme and artifice to defraud the United States and [MPAA] of money and property by making false statements and representations to the [Office] and [MPAA] and by giving materially false sworn testimony in a statutorily mandated administrative proceeding convened by the Library of Congress"), attached hereto as Exhibits 5 and 6. As the Register of Copyrights noted in the victim impact statement

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<sup>2</sup> IPG's wildly exaggerated claims in the 1997 Cable Phase II Proceeding are well-documented. See Reply in Support of Motion of Phase I Claimants for Distribution of Royalties, Docket No. 2005-4 CRB CD 2003, at 3-4, n.2 (filed August 16, 2006). For example, in the 1997 Cable Phase II Proceeding, IPG initially declared under penalty of perjury that it represented "the interests of dozens of rightsholders in the CARP proceedings, including such notable producers as DreamWorks, A&E Television, and the Academy of Television, Arts, and Sciences." *Independent Producers Group Motion to Accept Late Filing, etc.*, Docket No. 99-5 CD 97, at 3, Motion Exhibit B (filed October 1, 1999). In its direct case in that proceeding, IPG claimed a only a small number of claimants and compensable titles, most of which were questionable. By the conclusion of the proceeding, the Librarian had determined that IPG represented only one claimant, Litton Syndications, who had a claim for eight program titles. See *Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds*, Docket No. 2000-2 CARP CD 93-97 Ph. II (PS), Order dated June 5, 2001; see also 66 Fed. Reg. at 66439 and 66441.

filed in that case, Raul Galaz's acts of fraud had far-reaching implications, impacting later royalty years:

The ramifications of Mr. Galaz's crime extend beyond the 1997 cable distribution proceeding. Mr. Galaz, or entities in which he has an interest, have filed cable and satellite claims for the years 1998 through 2001. The Office cannot accept these claims at face value, as the Office has no confidence in the veracity of the information provided therein. Thus, before commencing proceedings to distribute these funds, the Office will need to investigate the veracity of the provided information. Such investigation will increase the Library's administrative costs and will delay the receipt of royalties by legitimate copyright owners.

\* \* \*

Furthermore, the Office has reason to believe that Mr. Galaz is continuing to conduct business in the usual course. On the day before his plea hearing, Mr. Galaz was at the Office examining cable and satellite claims. In order to better ensure that Mr. Galaz does not again wreak havoc on the claims filing system and given the administrative costs associated with his future participation in distribution proceedings, the Office also requests that the Court ban Mr. Galaz or any entity in which he has an interest from filing with the Office future cable or satellite claims and from pursuing claims which he or such entities have already filed.

Copyright Office Victim Impact Statement in *United States v. Raul C. Galaz*, Criminal Docket No. 02-cr-00230 (dated September 13, 2002), attached hereto as Exhibit 7. The Register's concerns regarding IPG's continued involvement in the royalty distribution process would later serve as the impetus for provisions in the Agreement that not only resolved the 1997, but barred, with limited exception, IPG's participation in 1998 and 1999 cable and satellite proceedings.<sup>3</sup>

### C. The Agreement

Following Raul Galaz's conviction and incarceration, and with IPG's counsel of record, Jeffrey Bogert, holding himself out as its counsel, IPG, MPAA, and the Librarian, through their

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<sup>3</sup> The Agreement allowed MPAA to pay royalties to IPG if IPG satisfied very specific and limited conditions regarding documentation of its claims. See Exhibit 1 at Part 1, pp. 2-4.

respective counsel, continued efforts to resolve the Appellate Cases. On March 31, 2004, following court-directed mediation, the parties executed the Agreement, a comprehensive two-part, three-party settlement which, by its terms, settled not only the Appellate Cases, but also resolved all disputes between the parties as to the distribution of the 1997, 1998, and 1999 cable and satellite royalty funds.

The first part of the Agreement, Settlement Agreement – Part 1, is a confidential settlement between MPAA and IPG, which, for due consideration paid to IPG, settled all outstanding Phase II controversies between the parties regarding the distribution of cable and satellite royalties for 1997, 1998 and 1999. *See* Exhibit 1 at Part 1, pp. 1-2. The second part of the Agreement, Settlement Agreement – Part 2, is a three-party settlement between IPG, MPAA, and the Librarian resolving all IPG claims to the 1997, 1998, and 1999 cable and satellite royalty funds (*i.e.*, the same royalty years as Settlement Agreement – Part 1) as well as the Appellate Cases. *See id.* at Part 2, pp. 1-2. Both parts of the agreement provide that IPG would not participate in distribution proceedings regarding the 1997, 1998, and 1999 cable and satellite royalty funds, and require IPG to file withdrawals of its notices of intent to participate in the 1998 and 1999 cable and satellite dockets. *See id.* at Part 1, p. 1 and Part 2, p. 1. Importantly, the Agreement incorporates, as an exhibit, a letter from IPG's counsel of record in the Appellate Cases, Mr. Bogert, certifying that the Agreement had been ratified by all requisite corporate action, and would be valid and binding upon IPG. *See id.* at Part 1, Attachment A. Both parts of the Agreement are required to be read as one agreement. *See id.* at Part 1, p.7 and Part 2, p. 2.

Following execution of the Agreement, MPAA, IPG, and the Librarian all took steps to comply with the Agreement. First, on April 2, 2004, the Librarian entered an order vacating the Agency Determination (that is, the agency order that gave rise to the Appellate Cases). *See*

Exhibit 8 (April 2, 2004 Order); *see also* Notice Announcing Order, 69 Fed. Reg. 23821, 23822 (April 30, 2004). Consistent with the April 2, 2004 Order which effectively terminated the 1997 Cable Phase II Proceeding, the Librarian proceeded to distribute all cable royalties held in reserve for 1997. Exhibit 9 (June 8, 2004 Order). Second, upon notice by the parties, the Court of Appeals dismissed the Appellate Cases. *See* Order, D.C. Cir. No. 02-1033, consolidated with 02-1040, at 1 (April 21, 2004). Third, IPG withdrew its notices of intent to participate in royalty distribution proceedings affecting the 1997, 1998, and 1999 cable and satellite royalty years, although it did so only as to the syndicated programming category. *See* Exhibit 10. Relying on IPG's withdrawals, the Librarian made a final distribution of all satellite royalties held in reserve for 1997 and 1998, Exhibit 11 (August 8, 2005 Order) at p. 2, Exhibit 12 (January 12, 2006 Order) at p. 2, and set reserve amounts for the other affected years. Exhibit 13 (February 8, 2006 Order) at pp. 2-3; Exhibit 14 (June 26, 2006 Order) (clarifying February 8, 2006 Order); Exhibit 15 (April 3, 2007 Order) at p.1, n.1 and p.4, n.7; Exhibit 16 (April 3, 2007 Order) at p. 5 (reserving no funds in the syndicated programming category for the 1998-99 cable royalty years for disputes with IPG); Exhibit 17 (April 6, 2007 Order) (clarifying April 3, 2007 Order); Exhibit 18 (April 10, 2007 Order) (further clarifying April 3, 2007 Order); Exhibit 19 (May 24, 2007 Order) at pp. 1-2 (establishing final reserve amounts in the syndicated programming category for the 1998-99 cable royalty years, without a reserve for IPG); Exhibit 20 (July 11, 2007 Order) at p. 3 (recognizing syndicated programming cable royalties reserve amount).

#### **D. Membership Interest and Management of IPG**

Before going to jail, Raul Galaz had held a 75% interest in IPG. Marian Oshita held the remaining 25% interest in IPG. Shortly before his incarceration, Raul Galaz transferred a portion of his interest in IPG to Lisa Galaz, his ex-wife, and the remaining portion to Marian Oshita, who

became President of IPG when Raul Galaz went to jail. Thereafter, a legal dispute arose between Lisa Galaz and Marian Oshita as to who held the majority interest in IPG. Ultimately, a trial court determined Lisa Galaz to be the majority (75%) interest holder in IPG. See Exhibit 2 at Complaint Exhibit C, p. 8, ¶ 2 (Plaintiff's Judgment on Jury Verdict in *Galaz v. Oshita*, Case No. BC 297015 (January 26, 2005)). That Judgment is silent both as to Marian Oshita's interest in IPG and her authority to bind IPG at the time the Agreement was executed.

IPG's internal management or ownership issues did not end with the *Galaz v. Oshita* lawsuit. Subsequent to the January 26, 2005 judgment, Lisa Galaz apparently transferred half (37.5%) of her interest in IPG to Denise Vernon, Raul Galaz's sister – a transfer which she recently claimed was illegal because it was made under duress by Raul Galaz and was not authorized by Marian Oshita, IPG's 25% interest holder. See Lisa Galaz's Original Counterclaims and Third-Party Petition, filed in *Vernon v. Galaz*, Texas Cause No. 2007-CI-13457 at ¶ 14 (filed March 27, 2008), removed to the U.S. Bankruptcy Court, W.D. Texas, Case No. 07-53287 (March 27, 2008), attached hereto as Exhibit 21. Lisa Galaz has further detailed Raul Galaz's "complete dominion and control over" IPG's operations since his release from prison in 2004, and has asserted that Raul Galaz forced the transfer of interest to Denise Vernon in order to avoid his restitution obligations to MPAA. See *id.* at ¶¶ 13-19. On May 2, 2008, notice of a settlement agreement was filed with the bankruptcy court in connection with the adversary proceeding, a copy of which is attached hereto as Exhibit 22. The notice, which recites the terms of the settlement agreement, is silent as to the validity of the transfer of IPG interest to Denise Vernon. See *id.* at pp. 3-5. In light of Lisa Galaz's allegations, it remains unclear who has majority interest in IPG and unclear whether that uncertainty will affect the authority to make decisions on behalf of IPG.

**E. The 1998-99 Phase II Proceeding**

Notwithstanding the Agreement, IPG has filed a petition to participate in the syndicated programs and movies category in the 1998-99 Phase II Proceeding. Following the start of the voluntary negotiation period, the MPAA-represented Program Suppliers sent two letters to IPG's current counsel reminding IPG of its obligations under the Agreement and requesting that IPG withdraw its petition to participate in this proceeding, as required by the Agreement's terms. *See* Letters from Gregory Olaniran to Brian Boydston, (dated April 9, 2008 and April 25, 2008), attached hereto, as Exhibits 23 and 24 (without attachments).<sup>4</sup> IPG responded by filing the Contract Action discussed below.

**F. The Legal Actions**

On April 29, 2008, shortly after commencement of the voluntary negotiation period in this proceeding,<sup>5</sup> IPG filed the Contract Action in the Superior Court for Los Angeles, California. IPG's Complaint, which names MPAA as the sole defendant, challenges the validity of the Agreement claiming that neither its member, Marian Oshita, nor its counsel, Mr. Bogert, had authority to bind IPG to the Agreement. Alternatively, IPG seeks to rescind the second part of the Agreement (involving IPG, MPAA and the Librarian) claiming a lack of consideration for certain provisions therein. *See* Exhibit 2. On June 6, 2008, MPAA removed the action to the United States District Court for the Central District of California. *See* Exhibit 25 (without exhibits). On June 13, 2008, MPAA filed a Motion to Dismiss the action and an alternative Motion to Transfer it to the District of Columbia District Court. *See* Exhibits 26 and 27. The District Court has yet to rule on these motions.

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<sup>4</sup> Exhibit 24 has been redacted to remove the amount of the settlement payment MPAA paid to IPG on April 7, 2004.

<sup>5</sup> The three-month voluntary negotiation period in this proceeding commenced on April 1, 2008. *See* Order, Docket No. 2008-1 CRB CD 1998-99 (March 24, 2008).

On November 9, 2006, IPG filed the Malpractice Action against its former counsel, Jeffrey Bogert, for legal malpractice, claiming, in part, that his representation of IPG in negotiating the Agreement was defective. *See* Exhibit 3 at p. 7, ¶ 25. IPG seeks over \$4 million dollars from Mr. Bogert as damages, a portion of which represents statutory royalties (for 1998 and 1999) IPG alleges it would have received via litigation if the Agreement were not in force, or if Mr. Bogert had represented IPG competently. *See* Exhibit 4 at pp. 1-2, ¶¶ 1(b) and (c). A jury trial in the Malpractice Action is scheduled for October 6, 2008. *See* Exhibit 28 at p. 1.

## II. DISCUSSION

The Judges have authority to issue a stay of proceedings pursuant to 17 U.S.C. § 801(c) (“The Copyright Royalty Judges may make any necessary procedural or evidentiary rulings in any proceeding under this chapter[.]”). The Judges, like a trial level court, have broad discretion to stay all proceedings in an action pending the resolution of independent proceedings elsewhere. *See Jost v. Surface Transp. Bd.*, 194 F.3d 79, 88 n.14 (D.C. Cir. 1999) (recognizing that a federal agency could properly stay proceedings pending an action in state court); *McSurely v. McClellan*, 426 F.2d 664, 671 (D.C. Cir. 1970) (“The District Court has broad discretion in granting or denying stays so as to coordinate the business of the court efficiently and sensibly.”); *see also Landis v. N. Am. Co.*, 229 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and efficiency.”). As discussed below, the outcome of either of the pending legal actions could affect IPG’s right to participate in the 1998-99 Phase II Proceeding in the Program Suppliers category. Therefore the MPAA-represented Program Suppliers request a stay of this proceeding as to the Program Suppliers category pending the resolution of the Contract Action and the Malpractice Action.

First, the outcome of the Contract Action will directly affect IPG's right to participate in the instant proceeding. The facts of the Contract Action weigh heavily against IPG. All three parties to the Agreement relied on it and took steps to comply with it. *See* discussion, *supra*. In particular, IPG received a cash sum and withdrew from participating in distribution proceedings regarding the 1997, 1998, and 1999 cable and satellite royalties. *See id.* Moreover, IPG's claim that neither Marian Oshita, its President at that time, nor Mr. Bogert, its counsel of record, had authority to enter into the Agreement, is belied by the attachment to the Agreement, which indicates that the Agreement had in fact been ratified by all requisite corporate action. *See* Exhibit 1, Part 1, Attachment A. What is more, the Contract Action will likely be dismissed for serious deficiencies because it fails to join the Librarian, a necessary and indispensable party, and does not meet the statute of limitations. Given these facts, there is a strong likelihood that the District Court will find IPG's action to be utterly without merit, and the Agreement to be valid. If so, IPG would have no right to participate in the 1998-99 Phase II Proceeding as to the Program Suppliers category.

Second, the outcome of the Malpractice Action could similarly affect IPG's right to participate in this proceeding. If, as IPG claims, its former attorney, Mr. Bogert, is found liable for legal malpractice in connection with his role in negotiating the Agreement on IPG's behalf, IPG stands to receive money damages that would compensate it specifically for 1998 and 1999 cable statutory royalties that IPG alleges it lost due to Mr. Bogert's incompetent representation. *See* Exhibit 4 at pp. 1-2, ¶¶ 1(b) and (c). Consequently, IPG could not seek those same royalties in this proceeding. If, on the other hand, IPG does not prevail and the court finds that Mr. Bogert did not commit malpractice, the Agreement would be validated. If the Agreement is valid, IPG would be disqualified from participating in the instant proceeding. Given that the outcome of



either or both actions could bar IPG's participation in the instant proceeding, clearly, a resolution of both the Contract Action and the Malpractice Action should occur before this proceeding moves forward.

MPAA remains concerned about the possible internal strife in IPG and the extent to which it could affect the parties' dealings with IPG in this proceeding. Lisa Galaz's allegation that her transfer of IPG ownership interest to Denise Vernon was illegal raises a question as to who has the controlling interest in IPG. *See* Exhibit 21 at ¶¶ 14-16. Further, based on Lisa Galaz's allegations, she has been denied access to the company's files and related documents by Raul Galaz who has been directing IPG from behind the scenes since he was released from jail. *See* Exhibit 21 at ¶ 16. This allegation has been confirmed by Raul Galaz and Denise Vernon in separate declarations filed with the bankruptcy court. *See* Declaration of Raul Galaz at ¶ 6, attached hereto as Exhibit 29; Declaration of Denise Vernon at ¶¶ 8-9, attached hereto as Exhibit 30. Raul Galaz has also asserted that Lisa Galaz erroneously has been holding herself out as President of IPG, without authority. *See* Exhibit 29 at ¶ 6. All of these allegations cast doubt on which party has authority to direct the activities of IPG. Although a settlement was reached in the adversary proceeding where Lisa Galaz made these allegations, that settlement did not resolve the various allegations. *See* Exhibit 22.

IPG has a history of exploiting this type of confusion to avoid unfavorable legal consequences. For example, while IPG claims in the Contract Action that Marian Oshita had no authority to bind IPG to the Agreement, *see* Exhibit 1 at ¶¶ 9, 21-23, it was Marian Oshita, as IPG President, who continued to file claims for IPG with the Copyright Office for the 2001 through 2003 cable and satellite royalty years. IPG's course of conduct demonstrates that IPG is quick to disavow and disclaim any action taken by one corporate member as soon as a different

party takes control of the organization, regardless of the involvement of counsel. Given IPG's history, and given the bankruptcy court allegations, it is critical that opposing parties understand that decisions by IPG are properly authorized by IPG members. Otherwise, concerns would always linger over whether IPG would respect settlement agreements (or even the results of litigated action). IPG must resolve the ownership interest and decisionmaking issues raised by Lisa Galaz before it can effectively participate in the instant proceeding. A stay of proceedings would afford IPG time to resolve these internal issues.

Finally, judicial economy favors a stay of proceedings. The Judges have broad discretion to grant a stay of proceedings to ensure the efficient allocation of their judicial resources, as well as the resources of the litigants. *See McSurely*, 426 F.2d at 671 (D.C. Cir. 1970); *see also Landis*, 229 U.S. at 254. Because IPG's right to participate in the 1998-99 Phase II Proceeding in the Program Suppliers category hinges on the Contract Action and the Malpractice Action, this policy objective of efficient use of judicial resources is served by a stay of the proceeding. If the 1998-99 Phase II Proceeding continues in the Program Suppliers category with IPG's participation, and it is later determined that IPG's participation was in error, the other Phase II Parties with claims in this category would have wasted their resources litigating against IPG. Further, because each Phase II Party will be required to fashion its case around IPG's claims, and the evidence the Judges hear will thus be influenced by IPG's participation, it is very likely that any proceeding including IPG will have to be reheard by the Judges if IPG is found to be an improper participant. Similarly, if the 1998-99 Phase II Proceeding continues without IPG's participation, and IPG is later found to have had a right to participate in the proceeding, then the Judges would have to commence a new Phase II Proceeding as to the Program Suppliers

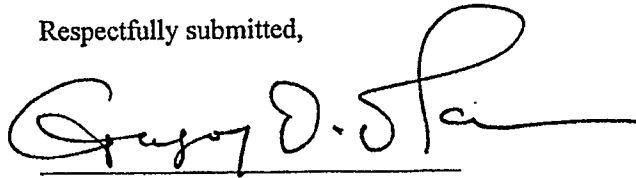
category to include IPG. All of the foregoing factors warrant a stay of the 1998-99 Phase II Proceeding until the Contract Action and the Malpractice Action are resolved.

### III. CONCLUSION

For the foregoing reasons, the MPAA-represented Program Suppliers request that the Judges grant this motion to stay the 1998-99 Phase II Proceeding in the Program Suppliers category until the Contract Action and the Malpractice Action are fully resolved.

Respectfully submitted,

Dated: June 24, 2008



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**Attorneys for MPAA-represented  
Program Suppliers**

## **EXHIBIT 1**

## SETTLEMENT AGREEMENT – PART 2

This Settlement Agreement-Part 2 is made as of this 31<sup>st</sup> day of March 2004 by and among Worldwide Subsidy Group, doing business as Independent Producers Group (hereinafter "IPG"), the Motion Picture Association of America, Inc. (hereinafter "MPAA"), and the Librarian of Congress.

WHEREAS, IPG, MPAA, and the Librarian of Congress are parties to appellate proceedings consolidated before the United States Court of Appeals for the District of Columbia Circuit, Case No. 02-1035 and Case No. 02-1040; and

WHEREAS, these parties intend to settle their differences regarding these appellate proceedings solely in order to avoid the costs, direct and indirect, that would be incurred by each of the parties in the future and the uncertainties of the current and anticipated litigation;

NOW THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Scope of Settlement. This Agreement settles all issues between and among the parties raised in the appellate proceeding.
2. Withdrawal of Notice of Intent. IPG agrees to withdraw its notice(s) of intent to participate in the proceeding to distribute the 1997, 1998 and 1999 Cable Royalty Funds and the 1997, 1998 and 1999 Satellite Royalty Funds.

3. Dismissal of the appeal: The parties shall promptly move to dismiss the appeal in Case No. 02-1035 and Case No. 02-1040.

4. Record: The Librarian of Congress shall issue, subsequent to the dismissal of the appeals in Case No. 02-1035 and Case No. 02-1040, the Order attached as Appendix A.

5. General Provisions:

a. This Agreement and any rights and obligations hereunder shall not be assignable by any of the parties hereto.

b. This Agreement and the Appendix hereto contain the entire agreement to which the Librarian of Congress is a party.

c. This Agreement shall be governed by the laws of the District of Columbia.


d. This Agreement may be executed in one or more counterparts which, taken together, shall constitute the whole agreement.

This Agreement shall not come into effect separately from the Settlement Agreement-Part 1 which includes provisions with respect to IPG and MPAA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

INDEPENDENT PRODUCERS GROUP

By

  
Authorized representative

MOTION PICTURE ASSOCIATION OF AMERICA

By

  
Authorized representative

THE LIBRARIAN OF CONGRESS

By

  
Authorized representative